

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6356 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ANILBHAI AMBALAL PATEL

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 18/02/99

ORAL JUDGEMENT

#. The petitioner through this writ petition under Article 226 of the Constitution of India has challenged the detention order dated 24th July, 1998 contained in Annexure-B passed by the Police Commissioner, Ahmedabad City under Section 3(2) of the Prevention of Anti Social Activities Act (for short 'PASA') and has prayed for quashing and setting aside the said order with further prayer to release the petitioner forthwith from illegal

detention.

#. It appears from the grounds of detention that the detaining authority on the basis of registration of four cases of theft etc under Section 454, 457 and 380 of IPC and the statements of three confidential witnesses arrived at subject satisfaction that the petitioner is dangerous person within the meaning of Section 2(c) of the PASA and that his activities were prejudicial for maintenance of public order. Accordingly, the impugned order was passed.

#. The said order is under challenge on the only ground that the activities of the petitioner were not prejudicial for maintenance of public order.

#. The petitioner's criminal activities of theft and recovery of stolen property are shown in the grounds of detention. The confidential witnesses have also deposed to the same effect that the petitioner was habitual in committing offences punishable under Chapter 17 of the IPC and as such he was rightly adjudged as dangerous person and the subjective satisfaction of the detaining authority on this count hardly requires any interference.

#. The person who commits theft repeatedly can technically be said to be a dangerous person within the meaning of Section 2(c) of PASA but only on account of these activities, he cannot be preventively detained. The commission of theft can be suitably dealt with under ordinary law under the IPC. The preventive detention under PASA can be justified only when the activities of dangerous person are found prejudicial for maintenance of public order as contained in Sections 3(4) and explanation to Section 3(4) of the PASA.

#. The learned AGP has argued that the petitioner committed theft repeatedly within a period of two months in the year 1998 and recovery of stolen property was also made from him. However, there is no indication from the grounds of detention that these thefts were committed in such high handed manner that even tempo of the life of the locality or the area or the community where such incidents actually occurred was disturbed. However, if the theft was committed secretly and the public at large was hardly affected such activity can not be said to be prejudicial for maintenance of public order. Thus all these cases are not sufficient for holding that the activities of the petitioner, were prejudicial for maintenance of public order.

#. So far as the confidential witnesses are concerned, in their statements, they have given statements that on one occasion, the petitioner wanted to keep certain gold ornaments with the witness and in lieu of thereof, he demanded cash from him. Upon refusal of the witness, the petitioner got excited and he dragged the witness on road and beat him. The witness raised alarm, whereupon, persons of the nearby locality collected. They were chased and sharp and lethal weapons were shown and threat was given by the petitioner.

#. The second incident as well as the third incident narrated by the remaining two witnesses can hardly be said to have disturbed even tempo of the life of the area or the locality or the community. Merely showing lethal weapons or sharp edged weapons without causing any injury to any member of the public, cannot be said to have created feeling of fear or danger or alarm within the meaning of explanation to Section 3(4) of the PASA.

#. Since the activities of the petitioner were not prejudicial for maintenance of public order, the impugned order of detention has been rendered illegal. The petition therefore succeeds and is allowed. The impugned order of detention dated 24th July, 1998 is hereby quashed. The petitioner shall be released forthwith unless wanted in some other case.

Date ; 18-2-1999 (D.C.Srivastava, J.)

*kailash